

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
INTEROFFICE MEMORANDUM

May 14, 2019

TO: Board of Commissioners
FROM: Saul Solomon, Legal Counsel
SUBJECT: Approval of Ethics Policy

There are many laws, policies, rules and regulations at both the federal and state level that govern the ethical obligations of MDHA Commissioners. MDHA has had a history of ethical and conscientious Commissioners and we are not aware of any instance where a Commissioner acted other than in the best interests of MDHA. After discussing this issue with Metro, MDHA Board counsel and other advisors, the MDHA administration believes it is "best practice" to have a written ethics policy for the Board. We are attaching a draft of this policy for your review and approval.



Saul Solomon

Attachment

MDHA BOARD OF COMMISSIONERS CONFIDENTIALITY AND CONFLICT OF INTEREST POLICY

A. Confidentiality

1. **General.** Any information acquired by Members of the Metropolitan Development and Housing Agency ("MDHA") Board of Commissioners during the scope of their activities on the MDHA Board is governed by and subject to the provisions of the Tennessee Open Records Act and any similar Federal law. To the extent any information acquired by a Commissioner is not open to the public under relevant law, such information shall be treated as confidential information, subject to the limitations contained in Section A(2) of this Policy. Commissioners shall not use any confidential information except as required in the performance of their duties for and on behalf of MDHA without the express written consent of the Executive Director of MDHA. Commissioners' obligations under this section are in addition to all other obligations of confidentiality as provided under applicable laws and under general legal or equitable principles.

2. **Limitation on Obligations.** The obligations of Commissioners specified in Section 1 above shall not apply, and Commissioners shall have no further obligations, with respect to any confidential information when such information:

- (a) is known to the public at the time of disclosure, or becomes publicly known through no wrongful act on the part of Commissioners or any other party without the breach of any obligation to MDHA or any other party;
- (b) is known to Commissioners or becomes known to Commissioners through disclosure by sources, other than MDHA, having the right to disclose such confidential information;
- (c) is developed by Commissioners independently of the use of the confidential information; or,
- (d) is approved for release by prior written authorization of MDHA.

3. **Continuing Obligations.** The requirement to preserve the confidential nature of confidential information shall survive any termination of this Policy or of any Commissioner's tenure on the MDHA Board to the extent necessary for the intended preservation of such rights and obligations.

4. **Return of Documents.** Commissioners shall, upon request of MDHA, return to MDHA all electronic files, disks, printouts, documents and other tangible manifestations of confidential information received by the Commissioner pursuant to this Policy (and all copies and reproductions thereof).

5. **Validity of Provisions; Severability.** If any provision of this Policy is found to be unenforceable or invalid, such a finding will not affect the validity or enforceability of any other provision of this Policy. The provision found to be unenforceable or invalid will be reformed to the extent (and only to the extent) necessary to make it enforceable, valid or

legal. If, for any reason, the offending provision is not, or cannot be, reformed, the provision shall be deleted from the Policy and the remainder of the Policy shall remain valid and enforceable.

B. Conflict of Interest

1. **Definitions.** The following definitions shall be used in the interpretation and application of this Policy:

- a) "Business Associate" means any individual or entity with whom a Commissioner has a business relationship, including, but not limited to:
 - i. Any corporation (including non-profit entities) or organization of which the Commissioner is an officer or partner, or in which the Commissioner beneficially owns ten percent or more of any class of equity security, including subordinated debt;
 - ii. Any other partner, officer or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and
 - iii. Any trust or other estate in which a Commissioner has a substantial beneficial interest or as to which the Commissioner serves as trustee or in a similar fiduciary capacity.
- b) "Financial Interest" means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to, any right, contractual or otherwise, to the payment of money, whether contingent or fixed.
- c) "Gift" includes:
 - i. A gifted item of more than insubstantial (*i.e.*, token) value;
 - ii. Entertainment or hospitality, the cost of which is in excess of what is considered reasonable, customary, and accepted business practice; or,
 - iii. Any other item or service for which a Commissioner pays less than market value.
- d) "Family Member" means any individual related to a person by blood, marriage, or adoption.

2. **Policy.** If a Commissioner, or Commissioner's family member, has a Financial Interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved application under any MDHA programs, the Commissioner shall not participate in or attempt to influence decisions by MDHA regarding the approval of such project.

3. **Prohibited Activities.** A Commissioner shall not participate in or attempt to influence decisions by MDHA regarding the approval, evaluation, funding, monitoring, noncompliance remediation, etc. of a project under any of MDHA's programs in which the

Commissioner or such person's family member has a Financial Interest in, or is a director, officer, or employee of an organization involved in the project. This prohibition also extends to those situations in which a project is contemplating applying under one or more of MDHA's programs.

Commissioners are prohibited from using their official positions for personal gain. A Commissioner shall not accept and shall discourage his or her Family Members from accepting, any Gift that the Commissioner believes or has reason to believe is given with the intent to influence the Commissioner, or where acceptance of such Gift would have the appearance of intending to influence the Commissioner's actions as Commissioner. In addition to Gifts, a Commissioner shall not accept compensation for services performed for MDHA from any source.

If related in any way, directly or indirectly, to being a Commissioner, a Commissioner shall not accept meals, beverages, food, promotional items, or other items of a value in excess of twenty-five dollars (\$25.00) received from a single source in a calendar year; and shall not accept free or discounted admissions, tickets, access to events or travel expenses from any single source of an aggregate value in any calendar year in excess of one hundred (\$100.00), provided that a Commissioner may accept from the sponsoring organization, on behalf of himself and a guest free or discounted admissions, tickets or access of a face value in excess of one hundred dollars (\$100.00) if the event is generally recognized as an annual fund raising benefit sponsored by a non-profit organization.

4. **Disclosure and Recusal.** A Commissioner shall in good faith fully disclose to MDHA management as soon as possible each instance of any instance covered by Paragraphs 2 or 3 of this Section or any other similar conflict of interest not specifically enumerated in this Policy. In such instances, at a minimum, a Commissioner shall disclose to MDHA management any Financial Interest(s) that he or she has, as well as any Financial Interest(s) known to the Commissioner of any Family Member or Business Associate of the Commissioner, in any matter to be considered by MDHA or its Board and in any other business matter or proposed business matter involving MDHA and any other person or entity.

Where a Commissioner must disclose a Financial Interest or any actual or possible conflict of interest or other violation of this Policy, that information shall, at the request of MDHA management, be disclosed in writing in a timely manner. The written report shall fully disclose the nature of the Commissioner's interest in the matter along with any information that MDHA may request or need to aid in the consideration of the Commissioner's interest. Any disclosure required under this policy concerning an item before the Board shall be made at the relevant meeting at which such item is being considered by the Board. When MDHA determines that a conflict of interest exists, MDHA will take the appropriate actions to mitigate the conflict. Until the conflict or violation is resolved, no action shall be taken on any pending matter.

5. **Compliance and Enforcement.** This Policy will be given to each Commissioner. As a condition of continued eligibility to serve on the Board, each Commissioner must annually certify his or her compliance with the standards established in this Policy. MDHA will maintain the signed certifications in each Commissioner's file.

6. **Policy Violations.** Any MDHA employee or Commissioner that suspects a Commissioner has influenced, participated in, or attempted to influence decisions by MDHA regarding any MDHA program in a manner prohibited by this Policy, shall notify MDHA's Executive Director.

The Executive Director shall appoint an officer to collaborate with appropriate parties, evaluate the facts and circumstances, and conclude whether there has been a violation of this policy. The officer will report his or her findings to the Executive Director, who will present the report to the Board.

The Board will assess the event to determine if it has a significant fiscal, financial, or reputational impact on MDHA and take appropriate action to resolve the matter.

7. **Conflict of Interest Disclosure Statement.** Every year on or before July 1, or within thirty (30) days of confirmation or hiring, all Commissioners must complete a Conflict of Interest Disclosure Statement. Disclosure statements will be filed with the Board Counsel of MDHA and reviewed by him or her and any outside Counsel to the Board for compliance with the provisions of this Policy. The Board Counsel review may require additional information from the disclosing party. The Board Counsel will report the results of the reviews to the Board. All persons subject to the requirements of this Section B(7) are responsible for reporting changes in status within thirty (30) calendar days of the change and submitting an updated disclosure statement to the Board Counsel.

8. **Federal Rules and Regulations.** In circumstances where MDHA would be required to seek a waiver from the United States Department of Housing and Urban Development, or any other Federal department or agency, for a person to become a Commissioner, such person shall not become a Commissioner until such waiver is obtained. This Section shall apply only to Commissioners nominated after the effective date of this Policy.

9. **Federal Law Supremacy.** MDHA is subject to many laws, rules, regulations and guidance relating to its relationship with HUD and the Federal government in general. To the extent anything in this Policy is inconsistent with such Federal law, the Federal law will take precedence.